

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

IRBY JAMES HARDY,

Plaintiff,

v.

CLIFF WALKER, *et al.*,

Defendants.

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CASE NO. 2:20-cv-950-RAH

ORDER

On October 21, 2020, the Magistrate Judge entered a Recommendation that this case should be dismissed prior to service of process pursuant to 28 U.S.C. § 1915A(b)(1). (Doc. 6.) Specifically, she found that Plaintiff Irby James Hardy's claims alleging the improper denial of parole and his attendant assertion of entitlement to release on parole are not properly before the court in a 42 U.S.C. § 1983 action. *Edwards v. Balisok*, 520 U.S. 641 (1997); *Heck v. Humphrey*, 512 U.S. 477 (1994); *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

On December 23, 2020, the Plaintiff filed an Objection (Doc. 7) arguing that the Magistrate Judge improperly determined that his claims were frivolous and contends he should be allowed to proceed in this case. However, as is clear from the Recommendation, the Magistrate Judge did not address the merits of the Plaintiff's claims for relief; instead, she determined that such claims were not properly before the court for review in an action filed under 42 U.S.C. § 1983 as the proper avenue for relief is a habeas petition under 28 U.S.C. § 2254. Thus, the Objection is due to be overruled.

On January 22, 2021, the Plaintiff filed an additional Objection (Doc. 8), arguing that the Magistrate Judge acted arbitrarily and capriciously in recommending the summary dismissal of his case. He asserts this court may decide the merits of his case because the court has jurisdiction to do so. However, the Plaintiff's challenge to the constitutionality of the denial of parole and request for release on parole is not proper in a § 1983 action.

After careful review and consideration of the Objections, and upon independent review of the Recommendation of the Magistrate Judge and file in this case, it is

ORDERED as follows:

1. The Recommendation of the Magistrate Judge (Doc. 6) be and is hereby ADOPTED.
2. The Objections (Docs. 7, 8) be and are hereby OVERRULED.
3. This case be DISMISSED without prejudice prior to service of process in accordance with the directives of 28 U.S.C. § 1915A(b)(1) as such claims currently provide no basis for relief in the instant cause of action.

DONE, this 25th day of January, 2021.

/s/ R. Austin Huffaker, Jr.
R. AUSTIN HUFFAKER, JR.
UNITED STATES DISTRICT JUDGE